



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

CARLOS VALENCIA-MARTINEZ,	§	
Petitioner,	§	
	§	
vs.	§	CIVIL ACTION NO. 6:06-1082-HFF-WMC
	§	
WARDEN M. PETTIFORD, Bennettsville	§	
Federal Correctional Institution	§	
(FCI-Bennettsville),	§	
Respondent.	§	

ORDER ADOPTING THE REPORT AND RECOMMENDATION OF THE
MAGISTRATE JUDGE AND DISMISSING THE ACTION *WITHOUT PREJUDICE* AND
WITHOUT ISSUANCE AND SERVICE OF PROCESS

This case was filed as a Section 2241 action. Petitioner is proceeding *pro se*. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that Petitioner's petition be dismissed *without prejudice* and without issuance and service of process. The Report is made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Matthews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on April 18, 2006. Petitioner subsequently filed a three-page objection memorandum that was received by the Clerk of Court on May 5, 2006. The Court has reviewed Petitioner's objections, but finds them to be without merit. Simply stated, and as observed by the Magistrate Judge, Petitioner's "present § 2241 petition is not the proper vehicle to mount this attack upon his conviction." (Report 4.) Consequently, for the reasons stated by the Magistrate Judge, the Court will dismiss this action.

After a thorough review of the Report and the record in this case pursuant to the standards set forth above, the Court overrules Petitioner's objections, adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that Petitioner's petition must be **DISMISSED** *without prejudice* and without issuance and service of process.

IT IS SO ORDERED.

Signed this 9th day of June, 2006, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified of the right to appeal this Order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.